

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 CURTIS JAY PIPPIN,

13 Defendant.

CASE NO. CR16-0266-JCC

ORDER

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15 This matter comes before the Court on Defendant Curtis Jay Pippin's emergency motion
16 for compassionate release (Dkt. No. 108). Having considered the parties' briefing and the
17 relevant record, the Court hereby DENIES the motion without prejudice for the reasons
18 explained herein.

19 **I. BACKGROUND**

20 On June 1, 2016, Auburn police arrested Mr. Pippin on suspicion of possessing child
21 pornography. (Dkt. No. 91 at 3.) In September 2016, Mr. Pippin's case was federalized, (*id.* at
22 3), and he ultimately pleaded guilty to possessing 7,207 image files and 144 video files depicting
23 minors engaged in sexually explicit conduct, (Dkt. No. 86 at 5–6).

24 On November 17, 2017, the Court sentenced Mr. Pippin to 84 months in prison with 20
25 years of supervised release to follow. (Dkt. No. 98 at 2–3.) The Court also recommended that
26 Mr. Pippin be incarcerated at a federal medical center because he suffers from multiple chronic

1 medical conditions. (*Id.* at 2; Dkt. No. 109 at 2.) The Bureau of Prisons did not follow the
 2 Court's recommendation, although it did incarcerate Mr. Pippin at a facility, FCI-Lompoc, that is
 3 located near a hospital capable of treating his condition. (Dkt. No. 108 at 5.)

4 FCI-Lompoc is now suffering from a serious COVID-19 outbreak: as of May 5, 2020, 51
 5 inmates and 10 staff members have tested positive for the virus. *COVID-19 Cases*,
 6 <https://www.bop.gov/coronavirus/index.jsp> (last visited May 5, 2020). That outbreak poses a
 7 unique risk to Mr. Pippin given his serious underlying medical conditions. (*See* Dkt. No. 111 at
 8 3.) Because of the unique risk Mr. Pippin faces, he asked FCI-Lompoc via email on April 16,
 9 2020, to file a motion for compassionate release on his behalf. (Dkt. No. 108 at 4.) FCI-Lompoc
 10 has yet to respond. (*Id.*) Mr. Pippin now asks the Court to release him before he serves the
 11 remaining 28 months of his 84-month sentence. (*See* Dkt. No. 108 at 5) (noting that Mr. Pippin's
 12 projected release date is September 6, 2022).

13 II. DISCUSSION

14 The Government argues that Mr. Pippin's motion is premature because 30 days have not
 15 elapsed since he asked FCI-Lompoc to bring a motion for compassionate release on his behalf.
 16 (*See* Dkt. No. 114 at 6.) Mr. Pippin acknowledges that 18 U.S.C. § 3582(c)(1)(A) requires him to
 17 wait 30 days to file his motion, but he claims that the Court can and should waive that
 18 requirement. (*See* Dkt. No. 108 at 17–20.) The Court concludes that it lacks authority to waive
 19 the 30-day waiting period.¹

20 18 U.S.C. § 3582(c)(1)(A) is a statute, and it must be interpreted according to the same
 21 principles that govern the interpretation of any statute. *See Ross v. Blake*, 136 S. Ct. 1850, 1856
 22 (2016). Those principles instruct a court to begin with a statute's text. *See id.* “If the statutory
 23 language is plain, [a court] must enforce it according to its terms.” *King v. Burwell*, 135 S. Ct.
 24 2480, 2489 (2015). This fundamental tenant of statutory interpretation dictates the outcome in

25
 26 ¹ The Court need not decide whether 18 U.S.C. § 3582(c)(1)(A) is “jurisdictional.” It is enough
 that the statute’s text precludes the Court from crafting exceptions to the 30-day waiting period.

1 this case.

2 18 U.S.C. § 3582(c)(1)(A) allows a district court to modify a term of imprisonment in
 3 three limited circumstances: (1) “upon motion of the Director of the Bureau of Prisons”; (2)
 4 “upon motion of the defendant after the defendant has fully exhausted all administrative rights to
 5 appeal a failure of the [BOP] to bring a motion on the defendant’s behalf”; or (3) “upon motion
 6 of the defendant after . . . the lapse of 30 days from the receipt of . . . a request [for a motion
 7 from the BOP on the defendant’s behalf] by the warden of the defendant’s facility.” These
 8 circumstances effectively give the BOP a maximum of 30 days to decide whether to bring a
 9 motion for compassionate relief on an inmate’s behalf. Until the BOP makes a decision or those
 10 30 days elapse, the statute prohibits a court from modifying an inmate’s term of imprisonment.

11 On its face, § 3582(c)(1)(A) contains no textual basis for the Court to waive the 30-day
 12 waiting period. Section 3582(c) begins with a general rule: “the court may not modify a term of
 13 imprisonment once it has been imposed.” Section 3582(c)(1)(A) then offers three specifically
 14 enumerated “excep[tions]” to that general rule. It lists no other exceptions, and it does not
 15 contain a catchall category allowing a court to waive the statute’s requirements if the court
 16 deems it wise to do so.

17 When faced with similarly unambiguous statutory requirements, the Supreme Court has
 18 looked unfavorably on judge-made exceptions to those requirements. In *Ross v. Blake*, 136 S. Ct.
 19 1850, 1856–58 (2016), the Supreme Court rejected a “special circumstance” exception to 42
 20 U.S.C. § 1997e(a)’s exhaustion requirement, observing that the statute’s mandatory language did
 21 not allow courts to create extra-textual exceptions. Similarly, in *Manrique v. United States*, 137
 22 S. Ct. 1266, 1271–72, 1274 (2017), the Supreme Court held that “[c]ourts do not have
 23 discretion” to overlook a failure to comply with a statutory claims-processing rule because such
 24 rules are “unalterable” if a party properly raises them. The holdings in *Manrique*, *Ross*, and
 25 similar cases have led many courts to conclude that they have no authority to read exceptions
 26 into § 3582(c)(1)(A)’s unambiguous and mandatory language. *See, e.g., United States v. Alam*,

1 2020 WL 1703881, slip op. at 2 (E.D. Mich. Apr. 8, 2020); *United States v. Holden*, 2020 WL
 2 1673440, slip op. at 6 (D. Or. Apr. 6, 2020); *United States v. Johnson*, 2020 WL 1663360, slip
 3 op. at 5 (D. Md. Apr. 3, 2020). That includes two decisions from this district. *See United States*
 4 *v. Fuller*, Case No. CR17-0324-JLR, Dkt. No. 44 at 4–6 (W.D. Wash. Apr. 13, 2020); *United*
 5 *States v. Young*, Case No. CR14-5242-RJB, Dkt. No. 440 at 3 (W.D. Wash. Apr. 6, 2020).

6 The Court finds those decisions persuasive. As evidenced from its text, § 3582(c)(1)(A)
 7 attempts to balance two competing principles: the valuable insight that the BOP has to offer a
 8 Court, and the need to expeditiously resolve motions for compassionate release. The statute
 9 balances those principles by giving the BOP 30 days—no more, and no less—to decide whether
 10 it will bring a motion for compassionate release on an inmates’ behalf. That 30-day deadline
 11 reflects a congressional judgment as to how long the BOP should have to offer its input in a case.
 12 The Court “must honor Congress’s choice” because when it comes to statutes, “Congress sets the
 13 rules—and courts have a role in creating exceptions only if Congress wants them to.” *Ross*, 136
 14 S. Ct. at 1857.

15 Mr. Pippin argues that the Court should feel free to create exceptions to § 3582(c)(1)(A)
 16 because courts often equitably toll statutes of limitations. (*See* Dkt. No. 108 at 15). However,
 17 courts equitably toll statutes of limitations because they reasonably assume that Congress wants
 18 them to do so, given that equitable tolling is well-rooted in American and English law. *See*
 19 *Young v. United States*, 535 U.S. 43, 49–50 (2002) (“Congress must be presumed to draft
 20 limitations periods in light of this background principle.”). There is no analogous history that
 21 might shed light on the meaning of § 3582(c)(1)(A); the statute is, as many courts have noted,
 22 “extremely unusual.” *See United States v. Russo*, 2020 WL 1862294, slip op. at 6 (S.D.N.Y. Apr.
 23 14, 2020). That unusual nature cautions against interpreting § 3582(c)(1)(A) by analogy and in

1 favor of interpreting the statute according to its plain terms.²

2 Mr. Pippin also points to other courts that have concluded, “[m]andating the exhaustion
 3 requirement . . . during the COVID-19 pandemic cannot be what Congress intended.” (Dkt. No.
 4 116 at 9) (quoting *United States v. Coles*, 2020 WL 1976296, slip op. at 5 (C.D. Ill. Apr. 24,
 5 2020)). The Court respectfully disagrees with those decisions, which conflate a court’s preferred
 6 policy with the policy Congress enacted. Congress may have omitted an “emergency
 7 circumstances” exception from § 3582(c)(1)(A) because it concluded that times of crisis and
 8 uncertainty are precisely when the BOP’s insight might be most valuable to a court trying to
 9 decide a motion for compassionate release. Congress may also have reasoned that in times of
 10 crisis, the BOP would promptly respond to inmates’ requests, making judicial waiver
 11 unnecessary. Or Congress may have felt that a bright-line 30-day rule was better than a rule
 12 subject to arbitrarily crafted exceptions. We do not know for certain what Congress thought.
 13 What we do know is that Congress created a rule with no exceptions, and the Court must enforce
 14 that rule as written. *See Ross*, 136 S. Ct. at 1857.

15 That being said, the Court acknowledges the unprecedented crisis created by COVID-19.
 16 That crises poses unique risks to people with serious medical conditions like Mr. Pippin, and
 17 those risks demand that the BOP respond quickly to requests for compassionate release. For
 18 while Congress gave the BOP the power to wait 30 days to responds to such requests, it charged
 19 the BOP with the responsibility to act sooner when circumstances demand. The Court implores
 20 the BOP to do so now.

21 **III. CONCLUSION**

22 For the foregoing reasons, the Court DENIES Mr. Pippin’s emergency motion for
 23 compassionate release (Dkt. No. 108) without prejudice.

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25 ² For that same reason, the Court assigns little weight to Ninth Circuit cases that read exceptions
 26 into claims-processing rules. *See Okafor v. United States*, 846 F.3d 337, 340 (9th Cir. 2017);
Forester v. Chertoff, 500 F.3d 920, 929 (9th Cir. 2007).

1 DATED this 6th day of May 2020.
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John C. Coughenour

5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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